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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**VIOLETTA HOANG, LIVIA HSIAO,
MICHAEL BLACKSBURG, and
MATTHEW HALL** individually and on
behalf of a class of similarly situated
persons,

Plaintiffs,

vs.

REUNION.COM, INC., a California
corporation,

Defendant.

Case No. 3:08-CV-03518-MMC

**SECOND AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF**

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiffs Violetta Hoang, Livia Hsiao, Michael Blacksborg, and Matthew Hall bring
 2 this action on behalf of themselves and all similarly-situated individuals and allege as
 3 follows:

4 INTRODUCTION

5 1. In enacting Section 17529.5 of the California Business and Professions
 6 Code, the California Legislature found and declared:

- 7
- 8 (a) Roughly 40 percent of all e-mail traffic in the United States is comprised of
 9 unsolicited commercial e-mail advertisements (hereafter spam) and
 10 industry experts predict that by the end of 2003 half of all e-mail traffic will
 11 be comprised of spam.
- 12 (b) The increase in spam is not only an annoyance but is also an increasing
 13 drain on corporate budgets and possibly a threat to the continued
 14 usefulness of the most successful tool of the computer age.
- 15 (c) Complaints from irate business and home-computer users regarding spam
 16 have skyrocketed...
- 17 (d) According to Ferris Research Inc., a San Francisco consulting
 18 group, spam will cost United States organizations more than ten
 19 billion dollars (\$10,000,000,000) this year, including lost productivity
 20 and the additional equipment, software, and manpower needed to
 21 combat the problem. California is 12 percent of the United States
 22 population with an emphasis on technology business, and it is
 23 therefore estimated that spam costs California organizations well
 24 over 1.2 billion dollars (\$1,200,000,000).
- 25 (e) Like junk faxes, spam imposes a cost on users, using up valuable
 26 storage space in e-mail inboxes ... and discourages people from
 27 using e-mail.
- 28 * * *
- (h) The "cost shifting" from deceptive spammers to Internet business and e-
 mail users has been likened to sending junk mail with postage due or
 making telemarketing calls to someone's pay-per-minute cellular phone.
- (k) The true beneficiaries of spam are the advertisers who benefit from
 the marketing derived from the advertisements
- * * *
- (m) Because of the above problems, it is necessary that spam be prohibited
 and that commercial advertising e-mails be regulated as set forth in this
 article.

(Cal. Bus. & Prof. C. §17529.).

2. The United States Congress also has determined that unsolicited commercial email is a problem that merits federal regulation, and enacted the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"). CAN-SPAM supplanted all state law regulation of commercial email spam, except for the most egregious type of spam – false and deceptive emails. With respect to claims that prohibit "falsity or deception in any portion of a commercial electronic mail message," Congress enlisted the assistance of state laws, such as California's Section 17529, which was already enacted at the time CAN-SPAM was passed, to eradicate such practices from the marketplace. Thus, false and deceptive emails may violate both federal and state laws.

3. The allegations contained herein and relating to the false and deceptive email practices of Defendant Reunion.com, Inc. ("Reunion.com") paint the very picture of the conduct that Section 17529 and CAN-SPAM were intended to prohibit and the harm they were intended to prevent: The use by an advertiser of false and deceptive email headers and subject lines to deceive Internet users into opening and reading commercial emails that such users would otherwise toss in their virtual trash. Aggravating their deceptive emailing practices and further fueling consumer outrage, Reunion.com obtains the email addresses for its deceptive email scheme by "hijacking" its members' personal email address books, copying all of its members' email addresses, and thereafter sending the deceptive bulk mail to all of those email addresses.

4. Reunion.com operates an Internet-based social networking website. Reunion.com advertises itself as the leading social networking service for grown-ups to reconnect and keep in touch with family, friends, lost loves and colleagues.

5. During or prior to the spring of 2008, Reunion.com initiated a deceptive email practice designed to boost Reunion.com's membership. The campaign consists of emails (the "Emails") sent by Reunion.com but appearing to come from individual

1 Reunion.com registered members. Each Email contains a subject line stating "Please
2 Connect With Me :-)" or "[Member Name] Wants to Connect with You" or something
3 substantially similar, with no reference to Reunion.com. Those subject lines – which are
4 written by Reunion.com without the member's approval, review, or authorization – are
5 false because the member has not made a request that the recipient connect with them
6 on Reunion.com. Moreover, the subject lines falsely and deceptively indicate that the
7 email is of a personal nature and not an unsolicited commercial email from
8 Reunion.com. The body text of each Email states, "I looked for you on Reunion.com,
9 but you weren't there. Please connect with me so we can keep in touch," or a
10 substantially similar statement, even though no such search has been conducted.

11 6. The Emails, as received by Plaintiffs Violetta Hoang, Livia Hsiao, Michael
12 Blacksborg, Matthew Hall, and others similarly situated, violate California Business and
13 Professions Code Section 17529.5(a)(2) and (a)(3), in that each Email: (i) contains
14 falsified, misrepresented and/or forged header information in the "From" line, which
15 falsely represents that the Email has been sent from an individual, rather than from
16 Reunion.com; and (ii) contains a subject line that Reunion.com knows would be likely to
17 mislead a recipient acting reasonably under the circumstances into believing that the
18 Email is a personal request to connect with an individual, rather than a commercial email
19 advertisement from Reunion.com.

20 7. On information and belief, many of the Emails, such as those received by
21 Plaintiffs Blacksborg and Hall, also violate Section 17529.5(a)(1), in that they are
22 deceptively accompanied in the "From" lines by a third-party's domain name without the
23 permission of that third party.

24 8. Taken as a whole, the Emails represent a clear attempt by Reunion.com to
25 disguise the fact that the Emails are unsolicited commercial email advertisements, and
26 to deceive recipients into opening the Emails on the mistaken belief that they are
27 personal requests by a single individual to "connect" with them. On information and
28 belief, Reunion.com has sent, and continues to send, millions of the Emails in the

1 regular course of its business, resulting in this Complaint and accompanying requests
2 for damages and injunctive relief.

3 9. “The header information and subject lines of the Emails were false in
4 numerous ways:

- 5 • The “From” line falsely states that a Reunion.com member sent the Emails
6 when Reunion.com actually sent them. Specifically, the Emails could not
7 have been “from” Reunion.com members because the members never
8 authorized the false content of the Emails. For example, the Emails state
9 that the member “looked for” the recipient on Reunion.com, but the
10 members never conducted any such search. This is a far cry from what
11 Reunion.com promises in its privacy policy, which is that Reunion.com “will
12 automatically send your friend a[n] email inviting him or her to visit the
13 site.” The email sent does not appear to come from Reunion.com nor is it
14 an invitation from Reunion.com – in accordance with the statements in the
15 privacy policy. Instead, Reunion.com disguises the email as being from
16 one of its members. In many cases, Reunion.com even falsely signed the
17 emails using its members’ names. Not only are the statements contained
18 in the Emails false, but also the member never authorized any such false
19 statement to be conveyed to the recipient. In fact, the member never
20 reviewed, commented on, authored or in any way otherwise assisted in the
21 creation of the Emails. Nor did the member even have an opportunity to
22 review, edit, or approve the content of the email. Because the member
23 neither authored nor authorized the false statements contained in the
24 emails, the emails were not “from” the member, but were instead “from”
25 Reunion.com.
- 26 • The “Subject” line falsely requests that the recipient “Please connect with
27 me :),” i.e. please connect with the Reunion.com member, when the emails
28 are not in fact requests from an individual to “connect”, but instead

commercial e-mail advertisements from Reunion.com soliciting the recipients to join Reunion.com. The Subject lines are plainly false because the member who appears in the From line did not ask the recipient to “connect.” On the contrary, that content was generated by Reunion.com without providing that member any input or opportunity to review or approve the message before it was sent. The statement was both unauthorized and false. Moreover, the subject line omits any mention of Reunion.com or of the fact that the email is commercial in nature – which would certainly mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

10. The numerous complaints received by the FTC about Reunion.com illustrate the impact of Reunion.com’s deceptive emails. A typical example of the FTC complaints is as follows:

“Apparently, reunion.com sent out emails to EVERYONE IN MY ADDRESS BOOK inviting them to join on the pretense they’re from me! This includes business contacts, old boyfriends, ex-husbands, etc. THIS IS INTERNET FRAUD!” (Exhibit B, attached hereto, p.43).

11. The Better Business Bureau, which has given Reunion.com a “D” rating, which is reserved for a company with such a troubling record that the Better Business Bureau recommends “caution in doing business with it.” The Better Business Bureau, like the FTC, has received many complaints about Reunion.com, including many similar to the following:

I received an email today that said so and so was searching for me, i followed the links to reunion.com, signed up and next thing I know, without warning or asking me a similar email was sent to my entire gmail address book. I would have NEVER sent an email to anyone inferring i was searching for them, let alone sent it to my entire address book. (Exhibit C,

attached hereto).

12. The FTC itself has instituted legal action to challenge the same types of false and deceptive email headers, From lines, and Subject lines as Reunion.com uses. In that case, the company also improperly attempted to cloak the false emails as merely “forward to a friend” emails. See *United States of America v. Jumpstart Technologies, LLC*, Civil Action No. C-06-2079 (MHP), (N.D.Cal.). The FTC’s Complaint which is attached hereto as Exhibit A, the United States and the FTC took the position that “send to a friend” emails are false and deceptive when such emails:

- a. Contain in the “from” line the name and personal email address of the referrer instead of the website owner;
- b. Contain a subject line that is a personal invitation or greeting from the consumer identified in the “from” line, when, in fact, the email is an unsolicited advertisement, and the advertiser’s name is not in the subject line; and
- c. Purport to be authored by the person in the “from” line, when, in fact, it is authored by the website owner.

13. The FTC entered into a consent decree that was widely publicized regarding this matter, in which Jumpstart agreed to pay \$900,000 in fines. Upon information and belief, Reunion.com knew of the FTC’s action against Jumpstart and chose to use the same types of headers, Subject lines, and From lines as did Jumpstart notwithstanding Reunion.com’s knowledge.

14. After the publicity received from the FTC action against Jumpstart, many law firms and industry associations put out guidelines and advisories to help companies avoid violations like those alleged by the FTC. As an example, a company called EmailLabs, an internet marketing consultant, provided this public guidance:

If you give users a forward-to-a-friend form or other mechanism to forward your emails, offers or Web pages, make it clear the message comes from your company. List your company or brand name in the “from” and subject lines, and avoid message

1 text that looks as if the friend generated it.

2 **Wrong:** From line: "John Doe." Subject line: "Hey Jane, Check this out!"
3 Message copy: "I found this great deal at XYZ.com"

4 **Right:** From line: "XYZ.Co." Subject line: "Your friend John Doe recommended
5 us." Message Text: "John Doe visited our site at XYZ.com and thought you would be
6 interested in receiving this great deal. We respect your privacy and will not add your
7 address to our database unless you opt in." Add a similar privacy statement on your
8 Web site's forwarding form, and then honor it.

9 See http://www.emailabs.com/email_marketing_articles/can_spam_violations.html.
10 (emphasis added).

11 **PARTIES**

12 15. Reunion.com, Inc. is a Delaware corporation, registered to conduct
13 business in California. On information and belief Reunion.com maintains its
14 headquarters at 2118 Wilshire Blvd., Santa Monica, CA 90403.

15 16. Plaintiff Violetta Hoang ("Hoang") is an individual who resides in San
16 Francisco, California.

17 17. Plaintiff Livia Hsiao ("Hsiao") is an individual who resides in Foster City,
18 California.

19 18. Plaintiff Michael Blacksburg ("Blacksburg") is an individual who resides in
20 San Francisco, California.

21 19. Plaintiff Matthew Hall ("Hall") is an individual who resides in Dripping
22 Springs, Texas.

23 **JURISDICTION AND VENUE**

24 20. This Court has subject matter jurisdiction over this matter pursuant to 28
25 U.S.C. §1332(d) because the amount in controversy in this matter exceeds the sum or
26 value of \$5,000,000 exclusive of interest and costs, and this matter is a class action in
27 which a member of the class of plaintiffs is a citizen of a state different from the
28 Defendant, and less than two-thirds of the members of the proposed plaintiff classes in

1 the aggregate are citizens of California.

2 21. This Court has personal jurisdiction over Reunion.com because
3 Reunion.com is registered with the California Secretary of State to conduct business
4 within California, maintains its headquarters and employees within California, and
5 conducts substantial business within California, such that Reunion.com has significant
6 continuous and pervasive contacts with the State of California.

7 22. Venue is proper in this Court because Plaintiffs Hoang and Blacksborg
8 reside in San Francisco, California. Furthermore, Reunion.com's User Agreement
9 contains a forum selection clause specifying "venue in the federal and state courts
10 located in San Francisco County, California, U.S.A. in all disputes arising out of or
11 relating to the Service."

12 INTRADISTRICT ASSIGNMENT

13 23. Pursuant to Local Rules 3-5(b) and 3-2(c), this action should be assigned
14 to the San Francisco division of the Northern District of California, because Plaintiffs
15 Hoang and Blacksborg reside in San Francisco, and because the forum selection clause
16 contained in Reunion.com's User Agreement specifies San Francisco as the appropriate
17 venue.

18 GENERAL ALLEGATIONS

19 Reunion.com's Business Practices and the Emails

20 24. Reunion.com operates a social networking Internet website. The
21 Reunion.com website allows members to search for old friends, classmates, and
22 colleagues. A member of the Reunion.com Website can add other members to his or
23 her "Friends" list, thereby creating a social network of Reunion.com members.

24 25. Reunion.com boasts that it has more than 32 million registered members,
25 a number that it claims is increasing by one million members a month.

26 26. In order to become a registered member of Reunion.com, a person must
27 provide his or her first name, last name, email address, gender and date of birth.
28 Additionally, Reunion.com asks registered members to provide the password to the

1 registered member's email account.

2 27. When a person registers to become a member of Reunion, Reunion.com
3 automatically preselects, in the form of a pre-checked box, its "Auto-invite" field. This
4 marketing technique is known as a "negative option," in that the person registering as a
5 member of Reunion.com must notice the pre-selection and go to the trouble of de-
6 selecting the field to avoid its effect. "Negative options" are lucrative marketing tools
7 because people often fail to notice that the field or box has been pre-selected.
8 Numerous consumer watchdog groups have condemned "negative options" as unfair
9 business practices.

10 28. Where a member does not de-select the "Auto-invite" field, Reunion.com
11 uses the registered member's email password to access the registered member's
12 personal email contacts. As set forth in Reunion.com's Privacy Policy, Reunion.com
13 purports to access the registered member's contacts for the purpose of sending emails
14 "from Reunion.com" to certain or all of those contacts and inviting those contacts to join
15 Reunion.com.

16 29. The emails sent by Reunion.com to registered members' email contacts
17 (as defined above, the "Emails"), however, are disguised so as not to appear to come
18 from Reunion.com, but from registered members personally, in that registered members'
19 names appear in the Emails' "From" lines. In some cases, the "From" lines consist of
20 registered members' personal email addresses, including the domain names of the
21 registered members' email services providers, and, on information and belief, without
22 any authorization from such email services providers. This is contrary to Reunion.com's
23 privacy policy, which states that Reunion.com "will automatically send your friend a[n]
24 email inviting him or her to visit the site." In some of the Reunion.com emails,
25 Reunion.com even "signs" the email on behalf of the member, reinforcing the perception
26 that the email is from the member and not Reunion.com.

27 30. Furthermore, the subject lines of the Emails do not invite recipient contacts
28 to join Reunion.com. Instead, they state, "Please Connect with Me :-)" or "[Member

1 Name] Wants to Connect with You” or something substantially similar, with neither
 2 making any reference to Reunion.com, or any indication that that the message contains
 3 an unsolicited commercial advertisement, or concerns a commercial subject matter.

4 31. Additionally, the body text of the Emails states, “I looked for you on
 5 Reunion.com, but you weren’t there. Please connect with me so we can keep in touch,”
 6 or something substantially similar, even though individuals registering with Reunion.com
 7 do not conduct searches as part of the registration procedure, and no such searches
 8 were conducted.

9 32. The Emails’ headers and subject lines create the deception of a personal
 10 request from the registered member to “connect” with the recipient, rather than an
 11 unsolicited commercial email advertisement sent from Reunion.com. That deception is
 12 intended by Reunion.com to encourage recipients to open and read the Emails, when
 13 recipients might otherwise ignore the Emails as one more piece of junk commercial
 14 email advertising.

15 33. The Emails are authored in whole by Reunion.com. Members do not
 16 assist in creating the content or the subject lines of the Emails. Nor can members edit or
 17 add content to the subject lines or content of the Emails. Nor are members provided
 18 with the opportunity to review or approve the Emails before Reunion.com sends them.
 19 Reunion.com does not serve as a technical intermediary in the transit of the Emails, but
 20 rather as the author of the Emails, and as sender of the Emails even though the various
 21 aspects of the Emails as described above were unauthorized, unreviewed, and false.

22 **Emails Received by Plaintiff Hoang**

23 34. On or around May 5, 2008 Plaintiff Violetta Hoang received an Email (the
 24 “Hoang Email”) from Reunion.com that appeared to have been sent by a former
 25 professor, T. Truong. A graphical depiction of the Hoang Email appears below:

26
 27
 28 //

From: **Truong Tran** <verify@relay05.reunion.com>
 Date: Mon, May 5, 2008 at 6:41 PM
 Subject: Truong wants to connect with you!
 To: loveeloisa@gmail.com

Hi,

I looked for you on Reunion.com, but you weren't there. I use Reunion.com to search for lost friends and contacts, and to stay connected with people I know, so please connect with me.

—Truong

RESPOND TO TRUONG:

[Connect with Truong Now!](#) - You'll also find out if anyone else is searching for you.

Or go to <http://www.reunion.com/showInviteRegistration.do?uid=258485053>

Error! Filename not specified.

Reunion.com - Life Changes. Keep in Touch.™

You have received this email because a Reunion.com Member sent an invitation to this email address. For assistance, please refer to our [FAQ](#) or [Contact Us](#).

Our Address: 2118 Wilshire Blvd., Box 1008, Santa Monica, CA 90403-5784

35. The Hoang Email was false and deceptive. Truong had not authored the Hoang Email. The Hoang Email was not, in fact, "From" Truong, as the Hoang Email indicates. Truong had not looked for Hoang on Reunion.com, as the Hoang Email falsely states. And, Truong had not requested that Hoang connect with him, as the Hoang Email falsely states. Reunion.com drafted and sent the Hoang Email to Hoang, knowing that these statements were false and unauthorized, with the intent to mislead Hoang into opening the Email and becoming a member of Reunion.com.

36. The "From" line of the Hoang Email was false and/or misrepresentative because it created the deception that the Hoang Email was from Truong and not from Reunion.com, and that Truong had authored or otherwise assisted in the creation of the Hoang Email. However, the Hoang Email was not sent by Truong but by Reunion.com, and Truong had not authored or otherwise assisted in the creation of the Hoang Email. Rather, the Hoang Email had been wholly authored by Reunion.com. As a result, the "From" line of the Hoang Email was false and misleading. Reunion.com intended to deceive Hoang by sending the Hoang Email with this "From" line in order to lure Hoang into opening and reading the Hoang Email. Reunion.com intended for Hoang to falsely believe that the Hoang Email had been sent by Truong and not by Reunion.com.

37. The subject line of the Hoang Email was false and misleading because it created the deception that the Hoang Email was a personal request by Truong to connect with Hoang, and not the unsolicited commercial email advertisement from Reunion.com, which it in fact was. The subject line in the Hoang Email falsely indicated that Truong had made an affirmative effort to connect with Hoang through the Reunion.com website. In fact, Truong had not done so. Instead, the subject line in the Hoang Email had been created automatically by Reunion.com without regard to any effort by Truong to "connect" with Hoang. As a result, the subject line of the Hoang Email was false and deceptive. Reunion.com intended to deceive Hoang by sending the Hoang Email with this subject line in order to lure Hoang into opening and reviewing the Hoang Email. Reunion.com intended for Hoang to falsely believe that Truong had been looking for her on the Reunion.com website, and to become a member of Reunion.com under this mistaken belief.

Emails Received by Plaintiff Hsiao

38. On or around May 5, 2008 Plaintiff Livia Hsiao received three Emails (the "Hsiao Emails") from Reunion.com that purported to have been sent from three of Hsiao's friends, E. Kang, V. Yeh, and A. Wong. Graphical depictions of the Hsiao Emails appear below:

//

//

//

From: **Esther Kang** <verify@relay05.reunion.com>
 Date: Mon, May 5, 2008 at 8:46 PM
 Subject: Esther wants to connect with you!
 To: liviahsiao@gmail.com

Hi,

I looked for you on Reunion.com, but you weren't there. I use Reunion.com to search for lost friends and contacts, and to stay connected with people I know, so please connect with me.

—Esther

RESPOND TO ESTHER:

[Connect with Esther Now!](#) - You'll also find out if anyone else is searching for you.

Or go to <http://www.reunion.com/showInviteRegistration.do?uid=258498145>

Error! Filename not specified.

Reunion.com - Life Changes. Keep in Touch.™

You have received this email because a Reunion.com Member sent an invitation to this email address. For assistance, please refer to our [FAQ](#) or [Contact Us](#).

Our Address: 2118 Wilshire Blvd., Box 1008, Santa Monica, CA 90403-5784

//

From: **Vivian Yeh** <verify@relay05.reunion.com>
 Date: Mon, May 5, 2008 at 8:56 PM
 Subject: Vivian wants to connect with you!
 To: liviahsiao@gmail.com

Hi,

I looked for you on Reunion.com, but you weren't there. I use Reunion.com to search for lost friends and contacts, and to stay connected with people I know, so please connect with me.

—Vivian

RESPOND TO VIVIAN:

[Connect with Vivian Now!](#) - You'll also find out if anyone else is searching for you.

Or go to <http://www.reunion.com/showInviteRegistration.do?uid=258500422>

Error! Filename not specified.

Reunion.com - Life Changes. Keep in Touch.™

You have received this email because a Reunion.com Member sent an invitation to this email address. For assistance, please refer to our [FAQ](#) or [Contact Us](#).

Our Address: 2118 Wilshire Blvd., Box 1008, Santa Monica, CA 90403-5784

1 From: **Andrea Wong** <verify@relay05.reunion.com>
 2 Date: Mon, May 5, 2008 at 10:06 PM
 3 Subject: Andrea wants to connect with you!
 4 To: liviahsiao@gmail.com

5 Hi,

6 I looked for you on Reunion.com, but you weren't there. I use Reunion.com to search
 7 for lost friends and contacts, and to stay connected with people I know, so please
 8 connect with me.

9 —Andrea

10 **RESPOND TO ANDREA:**

11 [Connect with Andrea Now!](#) - You'll also find out if anyone else is searching for you.

12 Or go to <http://www.reunion.com/showInviteRegistration.do?uid=229123621>

13 **Error! Filename not specified.**

14 Reunion.com - Life Changes. Keep in Touch.™

15 You have received this email because a Reunion.com Member sent an invitation to
 16 this email address. For assistance, please refer to our [FAQ](#) or [Contact Us](#).

17 Our Address: 2118 Wilshire Blvd., Box 1008, Santa Monica, CA 90403-5784

18 39. The Hsiao Emails were false and deceptive. Kang, Yeh, and Wong had
 19 not authored the Hsiao Emails, as the Hsiao Emails indicate. Nor, on information and
 20 belief, had Kang, Yeh, or Wong looked for Hsiao on Reunion.com, as the Hsiao Emails
 21 state. Nor did Kang, Yeh, or Wong request that Hsiao connect with them, as the Hsiao
 22 Emails state. Reunion.com drafted the Hsiao Emails knowing that these statements
 23 were not true, with the intent to mislead Hsiao into opening and reading the Hsiao
 24 Emails.

25 40. The "From" line of the Hsiao Emails were false and deceptive because
 26 they stated that they had been sent by Kang, Yeh, and Wong, when in fact they had
 27 been written and sent by Reunion.com. The Hsiao Emails were also false and deceptive
 28 because they implied that Kang, Yeh, and Wong had authored or otherwise assisted in
 the creation of the Hsiao Emails, when, in fact, Kang, Yeh, and Wong had not authored
 or otherwise assisted in the creation of the Hsiao Emails. Rather, the Hsiao Emails had
 been wholly authored and created by Reunion.com. As a result, the "From" line of the
 Hsiao Emails were false and deceptive. Reunion.com intended to deceive Hsiao by
 sending the Hsiao Emails with the above-described "From" lines in order to deceive

1 Hsiao into opening and reading the Hsiao Emails. Reunion.com intended for Hsiao to
2 falsely believe that the Hsiao Emails had been sent by Kang, Yeh, and Wong and not by
3 Reunion.com

4 41. The subject line of the Hsiao Emails were false and deceptive because
5 they created the false impression that the Hsiao Emails were personal requests by
6 Kang, Yeh, and Wong for Hsiao to connect with them, and not the unsolicited
7 commercial email advertisements from Reunion.com that they were. The subject lines in
8 the Hsiao Emails indicated that Kang, Yeh, and Wong had made affirmative efforts to
9 connect with Hsiao through the Reunion.com website. In fact, Kang, Yeh, and Wong had
10 made no such affirmative efforts. Instead, the subject lines in the Hsiao Emails had
11 been created automatically by Reunion.com without regard to any effort by Kang, Yeh,
12 and Wong to “connect” with Hsiao. As a result, the subject lines of the Hsiao Emails
13 were false and deceptive. Reunion.com intended to deceive Hsiao by sending the Hsiao
14 Emails with these subject lines in order to lure Hsiao into opening and reviewing the
15 Hsiao Email. Reunion.com intended for Hsiao to falsely believe that Kang, Yeh, and
16 Wong had been looking for her on the Reunion.com website.

17 **Email Received by Plaintiff Blacksborg**

18 42. On or around July 17, 2008 Plaintiff Michael Blacksborg received an Email
19 (the “Blacksburg Email”) from Reunion.com that purported to have been sent by E.
20 Dunn, a member of a Google electronic mailing list referred to as:
21 FOOLD@GOOGLEGROUPS.COM. An electronic mailing list is comprised of a program
22 that enables a person to subscribe to a list by supplying his or her email address.
23 Thereafter, any subscriber may send an email to a single email address (often referred
24 to as a “reflector”), and the electronic email address program re-sends that email to all of
25 the other subscribers on the list. An electronic mailing list is not a natural person.

26 43. A graphical depiction of the Blacksborg Email, along with the reflector,
27 FOOLD@GOOGLEGROUP.S.COM, appear below:

28 //

--- On Thu, 7/17/08, Erick Dunn <edmorphic@yahoo.com> wrote:
 From: Erick Dunn <edmorphic@yahoo.com>
 Subject: [Fool'd] Please connect with me :)
 To: foold@googlegroups.com
 Date: Thursday, July 17, 2008, 11:45 AM

**I looked for you on Reunion.com, but you weren't there.
 Please connect with me so we can keep in touch.**

Do you know Erick?

Yes

No

Tell us, and see who's searching for you!



Reunion.com - Find Everyone from Your Past.™

You have received this email because a Reunion.com Member sent an invitation to this email address.

For assistance, please refer to our [FAQ](#) or [Contact Us](#).

Our Address: 2118 Wilshire Blvd., Box 1008, Santa Monica, CA 90403-5784

Post: foold@googlegroups.com

Unsubscribe: foold-unsubscribe@googlegroups.com

Visit: <http://groups.google.com/group/foold?hl=en>

44. The Blacksburg Email was sent to the entire electronic mailing list membership because the mailing list address was listed as one of Dunn's email contacts.

45. The content of the Blacksburg Email was false and deceptive. Dunn had not authored the Blacksburg Email, as the Blacksburg Email indicates. Dunn had not looked for Blacksburg on Reunion.com, as the Blacksburg Email states. Nor had Dunn requested that Blacksburg "keep in touch" with him, as the Blacksburg Email states. Reunion.com drafted the Blacksburg Email knowing that these statements were not true, with the intent to mislead Blacksburg into opening and reading the Blacksburg Email. The "From" line of the Blacksburg Email was false and deceptive because it created the false impression that the Blacksburg Email was from Dunn and not from Reunion.com, and that Dunn had authored or otherwise assisted in the creation of the Blacksburg

1 Email. However, the Blacksbury Email had not been sent by Dunn but, rather, by
2 Reunion.com, and Dunn had not authored or otherwise assisted in the creation of the
3 Blacksbury Email. In fact, the Blacksbury Email had been wholly authored by
4 Reunion.com. As a result, the "From" line of the Blacksbury Email was false and
5 deceptive. Reunion.com intended to deceive Blacksbury by sending the Blacksbury
6 Email with this "From" line in order to deceive Blacksbury into opening and reviewing the
7 Blacksbury Email. Reunion.com intended for Blacksbury to falsely believe that the
8 Blacksbury Email had been sent by Dunn and not by Reunion.com.

9 46. The subject line of the Blacksbury Email was false and/or misleading
10 because it created the false impression that the Blacksbury Email was a personal
11 request by Dunn to connect with Blacksbury, and not the unsolicited commercial email
12 advertisement from Reunion.com that it was. The subject line in the Blacksbury Email
13 indicated that Dunn had made an affirmative effort to connect with Blacksbury through
14 the Reunion.com website. In fact, Dunn had made no such affirmative effort. Instead,
15 the subject line in the Blacksbury Email had been created automatically by Reunion.com
16 without regard to any effort by Dunn to "connect" with Blacksbury. As a result, the
17 subject line of the Blacksbury Email was false and deceptive. Reunion.com intended to
18 deceive Blacksbury by sending the Blacksbury Email with this subject line in order to
19 deceive Blacksbury into opening and reviewing the Blacksbury Email. Reunion.com
20 intended for Blacksbury to falsely believe that Dunn had been looking for her on the
21 Reunion.com website.

22 47. On information and belief, the Blacksbury Email was deceptively
23 accompanied by and/or contained a third party's domain name, "Yahoo.com," without
24 the permission of that third party. This created the deception that Yahoo, or Yahoo's
25 licensee, had authorized the sending of the Blacksbury Email. In fact, the Blacksbury
26 Email was sent out automatically by Reunion.com without Yahoo's or Yahoo's licensee's
27 consent. Reunion.com intended to create this deception to make the Blacksbury Email
28 appear more like a personal request as opposed to an automatic email advertisement.

1 Through this deception, Reunion.com intended for Blackburn to falsely believe that
2 Dunn had been looking for her on the Reunion.com website.

3 Email Received by Plaintiff Hall

4 48. On or around July 25, 2008 Plaintiff Matthew Hall received an Email (the
5 "Hall Email") from Reunion.com that appeared to have been sent by Mike Klump. A
6 graphical depiction of the Hall Email appears below:

7 From: **Mike Klumpp** <mikeklumpp@yahoo.com>
8 Date: Tue, Jul 22, 2008 at 11:09 AM
9 Subject: Please connect with me :)
10 To: matthallart@gmail.com

11 I looked for you on Reunion.com, but you weren't there.
12 Please connect with me so we can keep in touch.

13 Do you know Mike?

14 Yes

15 No

16 Tell us, and see who's searching for you!

17 Error! Filename not
18 specified.

19 **Reunion.com - Find Everyone from Your Past.™**

20 You have received this email because a [Reunion.com](#) Member
21 sent an invitation to this email address.

22 For assistance, please refer to our [FAQ](#) or [Contact Us](#).

23 Our Address: 2118 Wilshire Blvd., Box 1008, Santa Monica, CA 90403-5784

24 49. Mike Klump is Hall's former minister, who at the time the Hall Email was
25 sent, was in the process of relocating to another state and leaving his position as the
26 minister of Hall's religious congregation. Prior to Klump's relocation, Hall had
27 maintained a relationship with Klump as Hall's minister, and occasionally communicated
28 with Klump both inter-personally and by way of email. Prior to receiving the Hall Email,
Hall was unsure whether Klump intended to stay in touch following Klump's relocation.

50. The content of the Hall Email was false and deceptive. Klump had not
authored the Hall Email, as the Hall Email indicates. Klump had not looked for Hall on
Reunion.com, as the Hall Email states. Nor did Hall request that Hall "keep in touch"

1 with him through Reunion.com, as the Hall Email states. Reunion.com drafted the Hall
2 Email knowing that these statements were not true, with the intent to mislead Hall into
3 opening and reading the Hall Email.

4 51. The "From" line of the Hall Email was false and misrepresentative because
5 it created the deception that the Hall Email was from Klump and not from Reunion.com,
6 and that Klump had authored or otherwise assisted in the creation of the Hall Email.
7 However, the Hall Email was not sent by Klump but by Reunion.com, and Klump had not
8 authored or otherwise assisted in the creation of the Hall Email. Rather, the Hall Email
9 had been wholly authored by Reunion.com. As a result, the "From" line of the Hall Email
10 was false and misrepresentative. Reunion.com intended to deceive Hall by sending the
11 Hall Email with this "From" line in order to lure Hall into opening and reviewing the Hall
12 Email. Reunion.com intended for Hall to falsely believe that the Hall Email had been
13 sent by Klump and not by Reunion.com. The subject line of the Hall Email was false
14 and/or misleading because it created the deception that the Hall Email was a personal
15 request by Klump to connect with Hall, and not an unsolicited commercial email
16 advertisement from Reunion.com. The subject line in the Hall Email indicated that
17 Klump had made an affirmative effort to connect with Hall through the Reunion.com
18 website. In fact, Klump had made no such affirmative effort. Instead, the subject line in
19 the Hall Email had been created automatically by Reunion.com without regard to any
20 effort by Klump to "connect" with Hall. As a result, the subject line of the Hall Email was
21 false and misrepresentative. Reunion.com intended to deceive Hall by sending the Hall
22 Email with this subject line in order to lure Hall into reviewing the Hall Email.
23 Reunion.com intended for Hall to falsely believe that Klump had been looking for her on
24 the Reunion.com website.

25 52. On information and belief, the Hall Email was deceptively accompanied by
26 and/or contained a third party's domain name, "Yahoo.com," without the permission of
27 that third party. This created the deception that Yahoo, or Yahoo's licensee, had
28 authorized the sending of the Hall Email. In fact, the Hall Email was sent out

1 automatically by Reunion.com without Yahoo's or Yahoo's licensee's consent.
 2 Reunion.com intended to create this deception to make the Hall Email appear more like
 3 a personal request as opposed to an automatic email advertisement. Through this
 4 deception, Reunion.com intended for Hall to falsely believe that Klump had been looking
 5 for her on the Reunion.com website. Upon receiving the Hall Email, Hall believed and
 6 relied on the false representations that Klump had personally sent the Hall Email to Hall,
 7 and that Klump had made an affirmative effort to contact Hall in order to preserve their
 8 relationship following Klump's relocation.

9 **The Plaintiffs' Claims Are Not Expressly Preempted by CAN-SPAM**

10 53. In enacting CAN-SPAM, Congress explicitly intended to preserve state
 11 laws that regulated commercial emails that prohibit "falsity or deception in any portion of
 12 commercial electronic email message..." Congress did preempt all other state laws
 13 regulating commercial emails because it would be difficult for a sender of email to know
 14 the various states in which its recipients resided with just an email address, and,
 15 accordingly, it would be extremely difficult to comply with various state regulatory
 16 regimes. Senate Report No. 109-102, P.L. 108-807, CAN-SPAM Act of 2003 (July 16,
 17 2003). However, in the Senate Report which explains the rationale behind the
 18 preemption provision, Congress was careful to qualify that general proposition, and
 19 stated that it specifically intended to deny preemptive protection to senders of false or
 20 deceptive emails "because they target behavior that a legitimate business trying to
 21 comply with relevant laws would not be engaging in anyway." *Id.* Accordingly,
 22 Congress not only did not foresee difficulties of permitting state law regulation of false or
 23 deceptive emails, it chose as a matter of policy to expressly permit such state laws.

24 54. Various courts have examined the express preemption clause contained in
 25 CAN-SPAM, 15 U.S.C. §7707(b)(1). The words "falsity or deception" have been
 26 interpreted by the Fourth Circuit Court of Appeals looking to 15 U.S.C. §7704(1)(a),
 27 which permits a federal cause of action for sending false emails if the sender "has *actual*
 28 *knowledge, or knowledge fairly implied on the basis of objective circumstances*, that a

subject heading of the message would be *likely to mislead a recipient*, acting reasonably under the circumstances, about a *material* fact regarding the contents or subject matter of the message...” *Omega World Travel, Inc. v. Mummagraphics, Inc.*, 469 F.3d 348, 355 (4th Cir. 2006) (emphasis in original). Plaintiffs allege that Reunion.com had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that the Subject lines, headers and From lines of the Emails it sent to Plaintiffs were likely to mislead Plaintiffs acting reasonably under the circumstances about a material fact regarding the contents or subject matter of the Emails. As grounds for those allegations, among other reasons, Plaintiffs state that hundreds, if not thousands, of consumers have complained to the Better Business Bureau, the FTC, and to others, as well as publicly on the Internet about Reunion.com’s deceptive email scheme. Reunion.com knows of the consumer complaints and the complaint asserted in this lawsuit and refuses to change its practices, even though it would be relatively easy to do so, precisely because it relies on the effectiveness of its deceptive email scheme to grow its business.

55. For example consider this exchange between Reunion.com and this Better Business Bureau complainant (attached hereto as Exhibit C along with two other complaints made to the Better Business Bureau):

Complainant: They deceptively mined my address book and sent an email allegedly from me to thousands of contacts without my express permission. Resolution Sought: Send an apology letter to everyone in my address book, clarifying that I do not endorse their company or service, and that I did not authorize them to send an email in my name.

Reunion.com’s Response: Dear Customer, We understand that you are concerned about what happened. However, the only way that your address book is imported onto your Reunion.com account is for you to elect to do so. This is an option that is clearly stated on our site at the time of registration. If you wish to have everyone in your contact list removed so that they do not receive any further correspondence from your Reunion.com account you may do so simply by clicking on the “Friends” tab at the top of the page. Should you need further assistance please feel free to contact us at 1-888-704-1900. Best Regards, Reunion.com

Complainant’s Rebuttal: The only thing that’s clear in hindsight is that Reunion.com is attempting to fool people into furnishing their address

1 book password so they can spam in other people's name. NO ONE would
 2 EVER knowingly allow a company to send an email to EVERYONE in their
 3 address book, sight unseen, signed from themselves, endorsing
 4 ANYTHING. I have almost 2000 names in my Yahoo address book, and
 5 I'M not allowed to send a message to MY OWN entire contact list,
 6 because it's disallowed by Yahoo as SPAM. How can you tell me that
 7 when YOU do it (in my name and without my knowledge no less), it ISN'T
 8 spamming? It's OUTRAGEOUS to pretend otherwise. I can't wait to hear
 9 why Reunion.com doesn't provide users a preview of the letter they send
 10 in the user's name! This business should be shut down. I deserve an
 11 apology, and frankly, as recompense, I would like to send an email to
 12 everyone in Reunion.com's address book. You KNOW what it would say.
 13 (all emphasis in original).

14 **Reunion.com's Final Response:** Dear Customer, We sincerely
 15 apologize for any inconvenience this incident may have cause [sic] you or
 16 any of your contacts. We will make sure that your suggestions and
 17 concerns are forwarded to the appropriate department. Should you have
 18 additional questions you may contact us at 1-888-704-1900. Thank you
 19 and have a fantastic day! Best Regards, Reunion.com

20 The above exchange took place in April of this year, and Reunion.com continues to
 21 knowingly engage in conduct that is not only likely to mislead a reasonable person, but
 22 is frequently misleading reasonable people. Reunion.com continues to do so
 23 notwithstanding how easy it would be to change the procedures by which its Emails are
 24 sent, and to conform the content of the Emails to the true facts. For example,
 25 Reunion.com could refrain from using the deceptive practices described below, such as
 26 using pre-clicked boxes to purportedly obtain consumer consent. Its adamant refusal to
 27 do so more than satisfies the *Mummagraphics* standard.

28 56. The *Mummagraphics* decision of the Fourth Circuit did not hold that state
 law claims prohibiting falsity or deception are preempted unless they also require that
 the plaintiff plead and prove reliance and actual damages. It merely found that state
 laws that would prohibit emails containing immaterial inaccuracies on a strict liability
 standard, without any knowledge or intent on the part of the sender, were preempted.
 The Ninth Circuit has differentiated between claims that challenge intentionally false
 statements and claims that challenge fraudulent statements – acknowledging there is a
 difference between the terms fraudulent and falsity. In *Hart v. McLucas*, 535, F.2d 516,
 519 (9th Cir. 1976), the court held that the elements of a claim for an “intentional false

statement” are the “first three elements of fraud” only, mainly: “falsity, materiality, and knowledge.” This interpretation of the elements for an intentionally false statement claim is essentially identical to the elements that a claim would require to survive preemption according to *Mummagraphics*. Plaintiffs herein allege that the From lines, Subject lines, and headers of the Emails were false, knowingly and intentionally made by Reunion.com, and material.

The Emails Were Not Routine Conveyances as That Term is Used in CAN-SPAM

57. Reunion.com’s emails, dispatched in its email scheme, do not constitute a “routine conveyances” pursuant to the CAN-SPAM final rule, 16 C.F.R. §316.1 to 316.6, for a variety of reasons. Most importantly, Reunion.com was not engaged in the transmission, routing, relaying, handling, or storing, through an automatically technical process, of an electronic mail message for which another person has identified the recipient or provided the recipient address.

58. Instead, Reunion.com, as part of its scheme, creates the content of the Emails at issue, without any ability of the consumer to review, edit or approve the content.

59. Reunion.com obtains the email addresses from consumers in a deceptive manner. Specifically, Reunion.com uses a pre-checked box during the registration process, which is a technique that the FTC has specifically criticized as an insufficient manner in which to obtain consent from consumers. See Privacy Online: Fair Information Practices in the Electronic Marketplace, A Report to Congress, May 2000 at 26 (<http://www.ftc.gov/reports/privacy2000/privacy2000text.pdf>)(criticizing sites that state information will not be shared without consent, but then consent is deemed provided by the provision of the information, or by “pre-checked ‘click boxes’” buried at the end of a registration form.”). As the FTC noted, the use of such practices “undercuts the value of offering such choice in the first instance.”

60. Reunion.com engages in both deceptive practices outlined by the FTC. It combines the registration process by which one provides the information (email

addresses) with the actual practice of sending the emails – so that consumers who click the “next” button soon discover, much to their surprise, that they have simultaneously consented to two distinct acts: (a) register with the Reunion.com and (b) consent to have their contacts spammed with the deceptive Emails, with no separate, intermediate step permitting the consumer to choose who would be contacted by Reunion.com. By combining the steps of registration and consent to send the emails, Reunion.com misleads consumers into thinking that their personal information will not be used by Reunion.com without their consent, when the very act of registering is deemed to provide the consent that would be required.

61. Even more deceptive is Reunion.com’s practice of using a pre-checked “click box” at the bottom of its registration form that must be noticed and unclicked if the registering member is to avoid having all their contacts spammed. This “negative option” marketing practice has been widely condemned beyond the FTC by consumer watchdog groups. Indeed, in the FTC negative options workshop, FTC attorney Leslie Fair explicitly advised companies that to meet the FTC’s “deception policy statement,” a company should “Avoid Pre-Checked Boxes.”
<http://www.ftc.gov/bcp/workshops/negativeoption/presentations/Fair.pdf>

62. Given the FTC’s criticisms of negative options, pre-checked boxes, and the means by which consumers are deemed to provide consent merely by providing the information, it is clear that Reunion.com’s conduct is so at odds with the FTC’s definition of a forward to a friend, that it does not constitute a routine conveyance.

63. Furthermore, as part of its unlawful scheme, Reunion.com retains the email addresses of those who register to become members of Reunion.com. Reunion.com retains these email addresses to track the success of its email referral scheme and to engage in future email campaigns targeted at the retained email addresses, including the sending of additional “reminder e-mails.” Reunion.com thereby retains the email for a “purpose other than relaying the . . . message” purportedly from the Reunion.com member, and therefore, according to the FTC, “the seller would not fall

1 within the routine conveyance exemption.”

2 64. Reunion.com also retains the emails for other purposes, in addition to the
3 improper purposes described above. After Reunion.com sends the emails purportedly
4 “from a friend,” Reunion.com, on information and belief, tracks information regarding the
5 recipients of each email and the particular email sent, for purposes wholly unrelated to
6 the mere transmission, routing or relaying of the email. On information and belief, the
7 information collected by Reunion.com includes: whether a recipient opens an email;
8 whether a recipient clicks on any link in the email; whether a recipient starts the
9 registration process after clicking on a link in the email; whether a recipient finishes the
10 registration process after clicking on a link in the email; which email resulted in clicking
11 and registering (i.e. the initial email or any follow up email); the subject lines and content
12 of each email, compared to open rates, click-through rates and registration rates; and
13 revenue generated from recipients organized by subject line, specific email version, etc.

14 **Defendant’s Conduct Has Caused Extensive Consumer Outrage**

15 65. The deceptive nature of Reunion.com’s email practices has fueled
16 widespread consumer outrage. The Federal Trade Commission has received hundreds
17 of consumer complaints about Reunion.com’s deceptive email scheme and other
18 business tactics. Many of those complaints, which are attached hereto as Exhibit B,
19 mirror the factual allegations set forth herein. In describing Reunion.com’s misconduct,
20 one consumer astutely described exactly how the deceptive email scheme works:

21 When I created an account on this [website], . . . [i]t harvested my address
22 book at gmail.com, and sent emails to everyone in it saying [that I wanted to]
23 “Connect with You!” ***giving them the impression that I had lost contact***
24 ***with them and wanted them to create an account at reunion.com.*** When
25 my contacts received this, ***it appeared to them to have come directly from***
26 ***my email address at gmail.com. I had created my account at***
27 ***reunion.com in response to a similar illegitimate message sent to me by***
28 ***reunion.com when a friend created an account there, which appeared to***

1 ***come directly from him, and one or two of my contacts created an***
 2 ***account after receiving the message that appeared to be from me,*** and
 3 their address books were raided as well. I was especially embarrassed when I
 4 realized that these messages had been sent to people I didn't even know,
 5 such as any person I had ever emailed, from my gmail account, about an
 6 internet order, at the UC Davis Extension Office, and other places of business.
 7 (emphasis added). (Exhibit B, p. 22)

8 66. Other examples of consumer outrage over Reunion.com's false and
 9 deceptive email practices, all of which are contained in Exhibit B hereto, include the
 10 following:

- 11 • "I received invitation from reunion.com that appeared to be sent from a friend
 12 inviting me to join site. . . . Email has subject line that is misleading,
 13 suggesting a friend has invited me to join reunion.com. That friend never
 14 invited me and had 400 people spammed from her contacts list." (Exhibit B, p.
 15 15)
- 16 • "Everyone from my email address book has received a fraudulent email from
 17 what appears to be my email address, but is derived from reunion.com"
 18 (Exhibit B, p. 53)
- 19 • "Apparently, reunion.com sent out emails to EVERYONE IN MY ADDRESS
 20 BOOK inviting them to join on the pretense they're from me! This includes
 21 business contacts, old boyfriends, ex-husbands, etc. THIS IS INTERNET
 22 FRAUD!" (Exhibit B, p. 43)
- 23 • "False emails were sent out to all of my email contacts (over 1000 email
 24 contacts) stating that I was looking for them thru Reunion.com. Resolution
 25 Sought: I would like Reunion.com to cease and desist from false claims . . ."
 26 (Exhibit B, p. 31)
- 27 • "A friend I knew sent an email inviting me to join her on www.reunion.com
 28 Because I like my friend and had not heard from her in a while I went on the

1 site www.reunion.com. It prompted me to look in my addressbook to see who
 2 else was contacting me. Once I did that their site downloaded my entire
 3 addressbook and sent out the same misleading email inviting my own friends
 4 to join me. Once the site downloaded my email addresses there was no way
 5 to stop this process even though there was a big button: Next below it.”
 6 (Exhibit B, p. 10)

- 7 • “Reunion.com tricks you into going to website because ‘somebody is looking
 8 for you’ . . .” (Exhibit B, p. 11)
- 9 • “This company [reunion.com] hacked my email system, falsely telling my
 10 contacts that I was ‘looking for them’ on their social networking website.”
 11 (Exhibit B, p. 46)
- 12 • When you join for free these folks (reunion.com) pull thousands of email
 13 addresses from other people and they send emails to them in my name (as if)
 14 I’m send[ing] it to them telling these folks I’m trying to contact them. It’s a new
 15 spam. (Exhibit B, p. 23)
- 16 • “Reunion.com sent me an email saying that a friend was trying to contact me.
 17 When you click on their link, they somehow download all of your own
 18 addressbook contacts and send the same email to these new contacts using
 19 YOUR name, as if you want to contact them. . . . It is a scam that is going
 20 around, and it is—or should be—illegal!!!” (Exhibit B, p. 25)

21 67. As a consequence of these types of consumer complaints, including the
 22 one attached hereto as Exhibit C, the Better Business Bureau has assigned
 23 Reunion.com a “D” rating, which is reserved for a company with such a troubling record
 24 that the Better Business Bureau recommends “caution in doing business with it.”
 25 Indeed, the Better Business Bureau’s report on Reunion.com states that “[c]omplaints
 26 contain a pattern of allegations that the company uses the email address book of those
 27 who sign up to deceptively email their contacts that they are searching for them.”
 28

**Plaintiffs Have Standing to Assert Their Claims Here Under
Cal. Bus. & Prof. C. §17529**

68. The California legislature has recognized that the receipt of an unsolicited email advertisement, including an unsolicited email advertisement that:

(a)(1) . . . contains or is accompanied by a third-party's domain name without the permission of the third party.

(2) . . . contains or is accompanied by falsified, misrepresented, or forged header information . . .

(3) . . . has a subject line that a person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

“imposes a cost on users, using up valuable storage space in e-mail boxes, as well as costly computer band width, and on networks and the computer servers that power them . . .” Cal. Bus. & Prof. C. §17529(e).

69. In enacting section 17529.5, the California legislature declared it unlawful to send such emails, and it gave each recipient of such emails the right not to receive them. Furthermore, the California legislature gave each recipient of such emails a remedy for receiving such emails, whether or not they sustained “actual damages.”

70. Defendant’s sending of the emails described herein to Plaintiffs specifically caused Plaintiffs to be deprived of the statutory rights secured to them by the California legislature through Cal. Bus. & Prof. C. section 17529.5. Accordingly, the Plaintiffs have standing under Article III of the United States Constitution and under Cal. Bus. & Prof. C. section 17529.5 to bring the claims against the Defendant asserted herein in this Court.

CLASS ACTION ALLEGATIONS

71. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs Hoang and Hsiao bring this action on their own behalf and as representatives of all individuals who, at a time when they were not registered as members of Reunion.com, received one or more Emails described herein from Reunion.com within the period beginning three years prior

1 to the filing of this action up to and including the date of final judgment (“the Class”).
 2 The period beginning three years prior to the filing of this action up to and including the
 3 date of final judgment is hereinafter referred to as the “Class Period” or the “Relevant
 4 Period.”

5 72. Pursuant to Federal Rule of Civil Procedure 23(c)(5), Plaintiffs Blacksborg
 6 and Hall bring this action on their own behalves and as representatives of all individuals,
 7 who at a time when they were not registered members of Reunion.com during the Class
 8 Period, received one or more Emails from Reunion.com that specified in the “From” line
 9 a non-Reunion.com domain name (“the Third Party Domain Subclass” or “Subclass”).

10 73. A class action is proper under Federal Rule of Civil Procedure 23 because:
 11 a) the Class and Subclass are so numerous that joinder of all members is impracticable,
 12 b) there are questions of law and fact that are common to the Class and Subclass, c) the
 13 claims of the representative Plaintiffs are typical of the claims of the Class and Subclass,
 14 and the representative Plaintiffs will fairly and adequately protect the interests of the
 15 Class and Subclass. A class action is the superior method of adjudicating this
 16 controversy because under Rule 23(b)(3), questions of law and fact common to the
 17 Class and Subclass members predominate over any question affecting only individual
 18 members.

19 74. The common questions of law and fact include:

- 20 • Whether Reunion.com advertised in the Emails within the meaning of Cal.
 21 Bus. & Prof. C. §§17529.1 and 17529.5;
- 22 • Whether the Emails were sent from California and/or sent to California
 23 electronic mail addresses, within the meaning of Cal. Bus. & Prof. C.
 24 §§17529.5(a);
- 25 • Whether the Emails constitute unsolicited commercial email
 26 advertisements within the meaning of Cal. Bus. & Prof. C. §§17529.1(c) &
 27 (o);
- 28 • Whether the Emails contain falsified, misrepresented and/or forged header

information in violation of California Business and Professions Code Section 17529.5(a)(2);

- Whether the Emails contain a subject line that Reunion.com knew would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message in violation of California Business and Professions Code Section 17529.5(a)(3); and
- Whether the Emails that were sent from third party email accounts deceptively contain or are accompanied by a third-party's domain name without the permission of the third party in violation of California Business and Professions Code Section 17529.5(a)(1) (on behalf of the Third Party Domain Subclass only).

75. Plaintiffs can and will fairly and adequately represent and protect the interests of the Class and Subclass because:

- All of the questions of law and fact regarding the liability of Reunion.com are common to the Class and Subclass and predominate over any individual issues that may exist, such that by prevailing on their own claims, Plaintiffs will necessarily establish the liability of Reunion.com to all Class and Subclass members;
- Without the representation provided by Plaintiffs, it is unlikely that any Class or Subclass members would receive legal representation and/or obtain recourse for the misconduct carried out by Reunion.com; and
- Plaintiffs have retained competent attorneys who are experienced both in the conduct of class actions and the law governing commercial email advertising. Plaintiffs and their counsel have the necessary resources to litigate this class action, and Plaintiffs and their counsel are aware of their fiduciary responsibility to the Class and Subclass members and are determined to

1 discharge those duties to obtain the best possible recovery for the Class and
2 Subclass.

3 **FIRST CAUSE OF ACTION**

4 **Violation of Cal. Bus. & Prof. Code §17529.5(a)(1)**

5 **(Brought by Blacksborg and Hall, individually and on behalf** 6 **of the Third Party Domain Subclass)**

7 76. Plaintiffs repeat and incorporate by reference all of the allegations set forth
8 above. Blacksborg, Hall, and each member of the Third Party Domain Subclass were
9 recipients of unsolicited commercial email advertisements sent by Reunion.com, referred
10 to herein as the “Third Party Domain Subclass Emails” during the relevant time period.

11 77. On information and belief, the Third Party Domain Subclass Emails were
12 either sent from California and/or sent to California electronic mail addresses.

13 78. The Third Party Domain Subclass Emails received by Blacksborg, Hall,
14 and the members of the Third Party Domain Subclass deceptively contained or were
15 accompanied by third-party domain names without the permission of the third parties.
16 To wit, the “From” line of the Third Party Domain Subclass Emails received by
17 Blacksborg, Hall, and members of the Third Party Domain Subclass contained an
18 individual email address incorporating a third-party domain name, creating the deception
19 that the Third Party Domain Subclass Email was from the individual user of that email
20 address and/or the third party and not Reunion.com.

21 79. On information and belief, the Third Party Domain Subclass Emails
22 received by Blacksborg, Hall, and the members of the Third Party Domain Subclass
23 were sent without the permission of the third party that appeared in the “From” line, and
24 in violation of that third-party’s terms of use as relate to that third-party’s email services.

25 80. Reunion.com’s conduct, as described herein, violated and continues to
26 violate Cal. Bus. & Prof. C. §17529.5 (a) (1). As a result of that violation, Reunion.com
27 is liable to Blacksborg, Hall, and each member of the Third Party Domain Subclass and,
28 pursuant to Cal. Bus. & Prof. C. §17529.5(b)(1)(B)(ii), Blacksborg, Hall, and each

member of the Third Party Domain Subclass are entitled to liquidated damages of one thousand dollars for each unsolicited commercial email advertisement transmitted to them in violation of Cal. Bus. & Prof. C. §17529.5 (a).

SECOND CAUSE OF ACTION

Violation of Cal. Bus. & Prof. Code §17529.5(a)(2)

(Brought by All Plaintiffs individually and on behalf of the Class)

81. Plaintiffs repeat and incorporate by reference all of the allegations set forth above.

82. Hoang, Hsiao, Blacksborg, Hall and each member of the Class, were recipients of unsolicited commercial email advertisements sent by Reunion.com which contained falsified, misrepresented and/or forged header information in the "From" line, which falsely represented that the Email had been sent from an individual, rather than from Reunion.com, in violation of Cal. Bus. & Prof. Code §17529.5(a)(2).

83. On information and belief, the emails described in the preceding paragraph were either sent from California and/or sent to California electronic mail addresses.

84. As a result of Reunion.com's violation of Cal. Bus. & Prof. Code §17529.5(a)(2). Reunion.com is liable to Plaintiffs and the Class and, pursuant to Cal. Bus. & Prof. C. §17529.5(b)(1)(B)(ii), Plaintiffs and the Class are entitled to liquidated damages of one thousand dollars for each unsolicited commercial email advertisement transmitted in violation of Cal. Bus. & Prof. C. §17529.5 (a)(2).

THIRD CAUSE OF ACTION

Violation of Cal. Bus. & Prof. Code §17529.5(a)(3)

(Brought by All Plaintiffs on behalf of the Class)

85. Plaintiffs repeat and incorporate by reference all of the allegations of fact set forth above.

86. Hoang, Hsiao, and Blacksborg, Hall, and each member of the Class, were

recipients of unsolicited commercial email advertisements sent by Reunion.com which contained subject lines that Reunion.com knew were likely to mislead the recipients, acting reasonably under the circumstances, about a material fact regarding the contents of the subject matter of the messages. Specifically, each email contained a subject line stating "Please Connect With Me :-)" or "[Member Name] Wants to Connect with You" or something substantially similar, with no reference to Reunion.com. Reunion.com knew these subject lines would be likely to mislead a recipient acting reasonably under the circumstances into believing that the email was a personal request by an individual that the recipient of the email connect with that individual, rather than a commercial email advertisement from Reunion.com.

87. On information and belief, the emails described in the preceding paragraph were either sent from California and/or sent to California electronic mail addresses.

88. As a result of Reunion.com's violation of Cal. Bus. & Prof. Code §17529.5(a)(3). Reunion.com is liable to Plaintiffs and the Class and, pursuant to Cal. Bus. & Prof. C. §17529.5(b)(1)(B)(ii), Plaintiffs and the Class are entitled to liquidated damages of one thousand dollars for each unsolicited commercial email advertisement transmitted in violation of Cal. Bus. & Prof. C. §17529.5 (a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

- A. That the Court enter a judgment against Reunion.com that it has:
 - a. Violated Cal. Bus. Cal. Bus. & Prof. C. §17529.5(a)(1) and hence is liable therefore to Plaintiffs Blackburg and Hall, and members of the Third Party Domain Subclass;
 - b. Violated Cal. Bus. Cal. Bus. & Prof. C. §17529.5(a)(2) and (a)(3) and hence is liable therefore to Plaintiffs Hoang, Hsiao, Blackburg, Hall and members of the Class;

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B. That the Court enter a preliminary and permanent injunction enjoining Reunion.com and its agents, employees, representatives, and successors and predecessors in interest from violating Cal. Bus. & Prof. C. §17529.5(a)(1), (2) and (3).

C. That the Court enter a judgment against Reunion.com in favor of Plaintiffs' and the Class members as follows:

- a. Statutory damages in the amount of \$1000 for each email advertisement received by Plaintiffs Blacksbury and Hall and each member of the Third Party Domain Subclass Class pursuant to Cal. Bus. & Prof. C. §17529.5(b)(1)(B)(ii);
- b. Statutory damages in the amount of \$1000 for each email advertisement received by Plaintiffs and each member of the Class pursuant to Cal. Bus. & Prof. C. §17529.5(b)(1)(B)(ii);
- c. Plaintiffs' costs and attorneys' fees incurred by Plaintiffs in prosecuting this action, pursuant to Cal. Bus. & Prof. C. §17529.8(B)(2);
- d. Interest, including prejudgment interest, on the foregoing sums.

D. That the Court grant to Plaintiffs such additional relief as is just and proper.

DATED: May 29, 2008

SHAPIRO, HABER & URMY LLP

By: /s/ Todd S. Heyman

Todd S. Heyman
Attorneys for Plaintiffs

REQUEST FOR JURY TRIAL

Plaintiffs hereby demand a trial of this action by jury.

DATED: May 29, 2009

SHAPIRO, HABER & URMY LLP

By: /s/ Todd S. Heyman

Todd S. Heyman
Attorneys for Plaintiffs

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